



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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JEANIE OWEN MILLER

JOHN R. STEFFEN
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#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502) 564-2686

DANA COX NICKLES
GENERAL COUNSEL

Executive Branch Ethics Commission ADVISORY OPINION 09-9 January 23, 2009

- RE:**
1. Is it a conflict of interest for the President of the Kentucky Board of Dentistry to also serve as President of one of four regional testing companies authorized to administer a required clinical examination to dentists seeking licensure in Kentucky?
 2. Is it a conflict of interest for an individual who has been disciplined by the Kentucky Board of Dentistry to subsequently participate as a Board member in contract or employment decisions involving the individuals who investigated or prosecuted the Board member?

- DECISION:**
1. Yes, and such conflict of interest must be publicly disclosed and the individual must abstain from all decisions by the Kentucky Board of Dentistry relating to testing.
 2. Yes, and the individual must publicly disclose that he or she has been disciplined by the Kentucky Board of Dentistry, and must abstain from discussions and decisions by the Kentucky Board of Dentistry relating to such individuals employed by the Board.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was considered at the January 23, 2009 meeting of the Commission and the following opinion is issued.

In previously issued Advisory Opinions 08-16 and 08-22, the Commission clarified the following provisions of Executive Order 2008-454 regarding conflicts of interest by members of boards and commissions subject to the Executive Order:

"A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is

required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.”

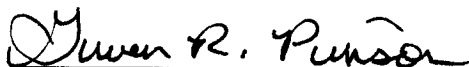
According to the website for the Kentucky Board of Dentistry, the Board is responsible for licensing dentists and dental hygienists and administering the Dental Practice Act, which involves investigating complaints and litigating complaints against dentists and dental hygienists. The members of the Kentucky Board of Dentistry are subject to the provisions of Executive Order 2008-454.

The Kentucky Board of Dentistry is the entity responsible for licensing dentists within the state, in accordance with KRS Chapter 313 and 201 KAR Chapter 8. The licensure requirements include passing a written examination and a clinical examination. Pursuant to 201 KAR 8:220, the Board of Dentistry determines the subject matter of the clinical examination, and allows four (4) regional testing companies to administer the clinical examination. Serving concurrently as President of the Kentucky Board of Dentistry and as President of one of the four (4) testing agencies included in 201 KAR 8:220 presents a conflict of interest that requires public disclosure and abstention from all Board discussion and decisions related to licensure testing requirements.

Additionally, the Kentucky Board of Dentistry is responsible for regulating the conduct of licensed dentists by investigating alleged misconduct and prosecuting violations of KRS Chapter 313. The Board has the authority to hire investigators to carry out these functions. A member of the Board who has been investigated prior to serving on the Board has a conflict of interest and may not participate in discussions and decisions related to the employment status of the investigators and other staff members who were involved in the Board member’s disciplinary matter. The Board member must publicly disclose the conflict of interest and abstain from discussion and decisions related to the employment status of those individuals.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson